



Committee on Criminal Justice Appropriations

Friday, March 24, 2006
9:00 am – 12:00 pm
214 Capitol

Allan Bense
Speaker

Gustavo Barreiro, CHAIR
Arthenia Joyner, Vice-Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Criminal Justice Appropriations Committee

Start Date and Time: Friday, March 24, 2006 09:00 am

End Date and Time: Friday, March 24, 2006 12:00 pm

Location: 214 Capitol

Duration: 3.00 hrs

Consideration of the following bill(s):

HB 809 Assault or Battery on Homeless Persons by Taylor

HB 827 Pretrial Release by Planas

Budget workshop

NOTICE FINALIZED on 03/22/2006 15:32 by KAG



Florida House of Representatives

Fiscal Council

Committee on Criminal Justice Appropriations

Allan Bense
Speaker

Gustavo Barreiro
Chair

AGENDA
COMMITTEE ON CRIMINAL JUSTICE APPROPRIATIONS
FRIDAY, MARCH 24, 2006
9:00am - 12:00pm
214 Capitol

- I. Roll Call and opening comments by Chair Barreiro**
- II. Consideration of the following bills:**
 - **HB 809**
 - **HB 827**
- III. Budget workshop**
- IV. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 809 Assault or Battery on Homeless Persons
SPONSOR(S): Taylor and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1992

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Criminal Justice Committee</u>	<u>7 Y, 0 N</u>	<u>Kramer</u>	<u>Kramer</u>
2) <u>Criminal Justice Appropriations Committee</u>	<u></u>	<u>Sneed</u>	<u>DeBeaugrine</u>
3) <u>Justice Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 809 reclassifies assault or battery offenses that are committed upon a homeless person as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

The offense would be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. The offense would be reclassified regardless of whether the offender was also homeless. Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The bill also requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. In addition, the bill authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service.

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the prison bed population in the Department of Corrections.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote personal responsibility: HB 809 will have the effect of increasing the maximum sentence which may be imposed for assault or battery offenses committed against a homeless person.

Provide limited government: The bill increases the maximum sanctions for offenses committed against a homeless person and will require the imposition of minimum mandatory sentences in certain circumstances.

B. EFFECT OF PROPOSED CHANGES:

Hate Crime Statute: Currently, section 775.085, F.S. provides that the penalty for any felony or misdemeanor must be reclassified if the commission of the offense evidences prejudice based on the race, color, ancestry, ethnicity, religion, sexual orientation, national origin, mental or physical disability or advanced age of the victim. There is currently no section of statute that specifically applies to criminal offenses committed against a homeless person.

Assault or Battery on Victim Age 65 or Older: Currently, section 784.08 provides that when a person is charged with committing assault¹, aggravated assault², battery³ or aggravated battery⁴ against a victim age 65 or older, the assault or battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

The section also requires the imposition of a three year minimum mandatory sentence⁵ against an offender who has been convicted of aggravated assault or aggravated battery against an elderly person.

There are a number of other sections of statute that reclassify assault or battery offenses if they are committed against specified types of victims.⁶

¹ An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. § 784.011, F.S.

² An aggravated assault is an assault with a deadly weapon without intent to kill or with an intent to commit a felony. § 784.021, F.S.

³ A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. § 784.03, F.S.

⁴ An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. § 784.045, F.S.

⁵ s. 784.08(1), F.S.

⁶ Section 784.07(2), F.S. reclassifies assault and battery offenses committed against a list of people such as law enforcement officers, firefighters, emergency medical care providers and public transit employees and requires the imposition of a three year minimum

Effect of HB 809 – reclassification of assault or battery offenses on homeless person: HB 809 reclassifies assault or battery offenses that are committed upon a homeless person in the same manner as assault or battery offenses committed on a victim age 65 or older, discussed above. The offense will be reclassified regardless of whether the offender knew or had reason to know the housing status of the victim. The offense would be reclassified regardless of the housing status of the offender.

As a result of the bill, assault will be reclassified from a second degree misdemeanor to a first degree misdemeanor; battery will be reclassified from a first degree misdemeanor and a third degree felony; aggravated assault will be reclassified from a third degree felony to a second degree felony and aggravated battery will be reclassified from a second degree felony to a first degree felony if the offense is committed on a homeless person. The bill requires the imposition of a three-year minimum mandatory sentence upon a person who is convicted of aggravated assault or aggravated battery upon a homeless person. The bill also authorizes the judge to impose a fine of up to \$10,000 and to order the defendant to perform up to 500 hours of community service. The bill provides that adjudication of guilt or imposition of sentence may not be suspended, deferred or withheld.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor is one year of incarceration; for a third degree felony is five years imprisonment; for a second degree felony is fifteen years imprisonment and for a first degree felony is thirty years imprisonment.⁷

The bill defines the term “homeless” in conformity with s. 420.621, F.S. which contains the following definition:

“Homeless” refers to an individual who lacks a fixed, regular, and adequate nighttime residence or an individual who has a primary nighttime residence that is:

- (a) A supervised publicly or privately operated shelter designed to provide temporary living accommodations, including welfare hotels, congregate shelters, and transitional housing for the mentally ill;
- (b) An institution that provides a temporary residence for individuals intended to be institutionalized; or
- (c) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The term does not refer to any individual imprisoned or otherwise detained pursuant to state or federal law.

C. SECTION DIRECTORY:

Section 1. Creates s. 784.0815, F.S. relating to assault or battery on homeless persons.

Section 2. Provides effective date of October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

mandatory sentence for aggravated assault of a law enforcement officer and a five year minimum mandatory sentence for aggravated battery of a law enforcement officer. See also, ss. 784.074, 784.081, 784.082, 784.083, F.S.

⁷ s. 775.082, F.S.

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None.

2. Expenditures:

The Criminal Justice Impact Conference met on March 21, 2006 and determined that this bill would have an indeterminate, but minimal, fiscal impact on the Department of Corrections prison bed population. Although it is estimated that there are approximately 68,000 to 75,000 homeless persons in the state, the number of reported cases of assault or battery offenses committed on homeless persons has been minimal.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

See above.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

HB 809

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A bill to be entitled

An act relating to assault or battery on homeless persons;
creating s. 784.0815, F.S.; providing a definition;
providing a minimum sentence for a person convicted of an
aggravated assault or aggravated battery upon a homeless
person; providing for reclassification of certain offenses
when committed against homeless persons; providing that
adjudication of guilt or imposition of sentence shall not
be suspended, deferred, or withheld for such offenses;
providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 784.0815, Florida Statutes, is created
to read:

784.0815 Assault or battery on homeless persons.--

(1) For purposes of this section, the term "homeless"
shall have the same meaning as provided in s. 420.621.

(2) A person who is convicted of an aggravated assault or
aggravated battery upon a homeless person shall be sentenced to
a minimum term of imprisonment of 3 years and fined not more
than \$10,000 and shall also be ordered by the sentencing judge
to make restitution to the victim of the offense and to perform
up to 500 hours of community service work. Restitution and
community service work shall be in addition to any fine or
sentence that may be imposed and shall not be in lieu thereof.

(3) Whenever a person is charged with committing an
assault or aggravated assault or a battery or aggravated battery

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2006

29 upon a homeless person, regardless of whether he or she knows or
 30 has reason to know the housing status of the victim, the offense
 31 for which the person is charged shall be reclassified as
 32 follows:

33 (a) In the case of aggravated battery, from a felony of
 34 the second degree to a felony of the first degree.

35 (b) In the case of aggravated assault, from a felony of
 36 the third degree to a felony of the second degree.

37 (c) In the case of battery, from a misdemeanor of the
 38 first degree to a felony of the third degree.

39 (d) In the case of assault, from a misdemeanor of the
 40 second degree to a misdemeanor of the first degree.

41 (4) Notwithstanding the provisions of s. 948.01,
 42 adjudication of guilt or imposition of sentence shall not be
 43 suspended, deferred, or withheld.

44 Section 2. This act shall take effect October 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 809**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Criminal Justice Appropriations
Representative(s) Taylor offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Section 775.085, Florida Statutes, is amended
to read:

775.085 Evidencing prejudice while committing offense;
reclassification.--

(1)(a) The penalty for any felony or misdemeanor shall be
reclassified as provided in this subsection if the commission of
such felony or misdemeanor evidences prejudice based on the
race, color, ancestry, ethnicity, religion, sexual orientation,
national origin, homeless status, mental or physical disability,
or advanced age of the victim:

1. A misdemeanor of the second degree is reclassified to a
misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a
felony of the third degree.

3. A felony of the third degree is reclassified to a
felony of the second degree.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22 4. A felony of the second degree is reclassified to a
23 felony of the first degree.

24 5. A felony of the first degree is reclassified to a life
25 felony.

26 (b) As used in paragraph (a), the term:

27 1. "Mental or physical disability" means that the victim
28 suffers from a condition of physical or mental incapacitation
29 due to a developmental disability, organic brain damage, or
30 mental illness, and has one or more physical or mental
31 limitations that restrict the victim's ability to perform the
32 normal activities of daily living.

33 2. "Advanced age" means that the victim is older than 65
34 years of age.

35 3. "Homeless status" means that the victim is homeless as
36 the term is defined in s. 420.621.

37 (2) A person or organization that establishes by clear and
38 convincing evidence that it has been coerced, intimidated, or
39 threatened in violation of this section has a civil cause of
40 action for treble damages, an injunction, or any other
41 appropriate relief in law or in equity. Upon prevailing in such
42 civil action, the plaintiff may recover reasonable attorney's
43 fees and costs.

44 (3) It is an essential element of this section that the
45 record reflect that the defendant perceived, knew, or had
46 reasonable grounds to know or perceive that the victim was
47 within the class delineated in this section.

48 Section 2. Section 784.0815, Florida Statutes, is created
49 to read:

50 784.0815 Assault or battery on homeless persons.--

51 (1) For purposes of this section, the term "homeless"
52 shall have the same meaning as provided in s. 420.621.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

53 (2) A person who is convicted of an aggravated assault or
54 aggravated battery offense that is reclassified pursuant to s.
55 775.085 based on the homeless status of the victim shall be
56 sentenced to a minimum term of imprisonment of 3 years and fined
57 not more than \$10,000 and shall also be ordered by the
58 sentencing judge to make restitution to the victim of the
59 offense and to perform up to 500 hours of community service
60 work. Restitution and community service work shall be in
61 addition to any fine or sentence that may be imposed and shall
62 not be in lieu thereof. Notwithstanding the provisions of s.
63 948.01, adjudication of guilt or imposition of sentence shall
64 not be suspended, deferred, or withheld.

65 Section 3. This act shall take effect October 1, 2006.

66
67 ===== T I T L E A M E N D M E N T =====

68 Remove the entire title and insert:

69 An act relating to assault or battery on homeless persons;
70 amending s. 775.085; reclassifying offenses evidencing prejudice
71 based on homeless status of victim; creating s. 784.0815, F.S.;
72 providing a definition; providing a minimum sentence for a
73 person convicted of an aggravated assault or aggravated battery
74 upon a homeless person in certain circumstances; providing
75 effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 809**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

Council/Committee hearing bill: Criminal Justice Appropriations
Representative(s) Taylor offered the following:

Amendment (with title amendment)

Between lines 12 and 13 insert:

Section 1. This act may be cited as the "Norris Act".

Section 2. Section 775.085, Florida Statutes, is amended
to read:

775.085 Evidencing prejudice while committing offense;
reclassification.--

(1)(a) The penalty for any felony or misdemeanor shall be
reclassified as provided in this subsection if the commission of
such felony or misdemeanor evidences prejudice based on the
race, color, ancestry, ethnicity, religion, sexual orientation,
national origin, homeless status, mental or physical disability,
or advanced age of the victim:

1. A misdemeanor of the second degree is reclassified to a
misdemeanor of the first degree.

2. A misdemeanor of the first degree is reclassified to a
felony of the third degree.

3. A felony of the third degree is reclassified to a
felony of the second degree.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

4. A felony of the second degree is reclassified to a felony of the first degree.

5. A felony of the first degree is reclassified to a life felony.

(b) As used in paragraph (a), the term:

1. "Mental or physical disability" means that the victim suffers from a condition of physical or mental incapacitation due to a developmental disability, organic brain damage, or mental illness, and has one or more physical or mental limitations that restrict the victim's ability to perform the normal activities of daily living.

2. "Advanced age" means that the victim is older than 65 years of age.

3. "Homeless status" means that the victim is homeless as the term is defined in s. 420.621.

(2) A person or organization that establishes by clear and convincing evidence that it has been coerced, intimidated, or threatened in violation of this section has a civil cause of action for treble damages, an injunction, or any other appropriate relief in law or in equity. Upon prevailing in such civil action, the plaintiff may recover reasonable attorney's fees and costs.

(3) It is an essential element of this section that the record reflect that the defendant perceived, knew, or had reasonable grounds to know or perceive that the victim was within the class delineated in this section.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to assault or battery on homeless persons; creating the "Norris Act"; amending s. 775.085; reclassifying

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

54 offenses evidencing prejudice based on homeless status of
55 victim; creating s. 784.0815, F.S.; providing a definition;
56 providing a minimum sentence for a person convicted of an
57 aggravated assault or aggravated battery upon a homeless person
58 in certain circumstances; providing for reclassification of
59 certain offenses when committed against homeless persons;
60 providing effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 827

Pretrial Release

SPONSOR(S): Planas

TIED BILLS:

IDEN./SIM. BILLS: SB 2018

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Criminal Justice Committee	8 Y, 0 N	Cunningham	Kramer
2) Criminal Justice Appropriations Committee		DeBeaugrine	DeBeaugrine
3) Justice Council			
4)			
5)			

SUMMARY ANALYSIS

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. With certain exceptions, there is a presumption in favor of release on nonmonetary conditions. Additionally, courts *must* impose conditions requiring the defendant on pretrial release to refrain from criminal activity of any kind and to refrain from contact with the victim.

HB 827 requires judges who grant monetary bail to set a separate and specific bail amount for each charge. This bill also provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions. This bill also provides that a court must require a defendant to comply with all conditions of pretrial release.

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent who pledges that a defendant will appear at all scheduled proceedings before a court. If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond "forfeited." In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.

HB 827 amends statutes relating to bail bonds, specifically their forfeiture, judgment, and cancellation. Additionally, it clarifies that the original appearance bond does not guarantee a defendant's appearance after a defendant enters a guilty or nolo contendere plea, after a defendant is adjudicated guilty, after adjudication is withheld, and in other situations.

This bill takes effect October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Maintain Public Security → This bill provides that a court must require persons on pretrial release to comply with all conditions of pretrial release; provides that a court must set a separate bail for each charged offense; provides that defendants charged with a second or subsequent felony within three years after the date of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of pretrial release on nonmonetary conditions; and requires courts to issue a *capias* or arrest warrant if a defendant on bond fails to appear.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Pretrial Release

Article I, section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions.¹ There is a presumption in favor of release on *nonmonetary* conditions² for any person who is granted pretrial release unless such person is charged with a dangerous crime.³ Although courts have the authority to impose any number of pretrial release conditions, courts *must* impose conditions requiring the defendant to refrain from criminal activity of any kind and to refrain from contact with the victim.⁴

Bail Bonds

Bail, one of the most common monetary conditions of pretrial release, requires an accused to pay a set sum of money to the sheriff. As an alternative to posting bail, a defendant may employ the services of a bail bond agent.⁵ A bail bond serves as a pledge by a bail bond agent that a defendant will appear at all scheduled proceedings before a court.

Bail bond agents are licensed and regulated by the Department of Financial Services (DFS), pursuant to chapter 648, F.S. A bail bond agent may either be a limited surety agent who is appointed by a surety insurance company to execute or countersign bail bonds, or a professional bail bond agent who pledges his or her own funds as security for a bail bond. The chapter provides requirements for licensure of bail bond agents, limits the amount of premium and expenses which can be charged, restricts the types of collateral which can be demanded, and requires that such collateral be returned in a timely manner once the bond has been canceled.

Chapter 903, F.S., sets forth the requirements relating to bail and bail bonds, including all forms of pretrial release. After a defendant has been released on bail, the bail bond agent has the authority to

¹ Conditions of pretrial release are determined at a defendant's first appearance hearing. Rule 3.130, Fla. R. Crim. Proc.

² Nonmonetary conditions include releasing defendants on their own recognizance. Rule 3.131(b)(1), Fla. R. Crim. Proc.

³ "Dangerous crimes" include: arson; aggravated assault; aggravated battery; illegal use of explosives; child abuse or aggravated child abuse; abuse or aggravated abuse of an elderly person or disabled adult; aircraft piracy; kidnapping; homicide; manslaughter; sexual battery; robbery; carjacking; lewd, lascivious, or indecent assault or act upon or in presence of a child under the age of 16 years; sexual activity with a child, who is 12 years of age or older but less than 18 years of age, by or at solicitation of person in familial or custodial authority; burglary of a dwelling; stalking and aggravated stalking; act of domestic violence as defined in s. 741.28, F.S.; home invasion robbery; act of terrorism as defined in s. 775.30, F.S.; and attempting or conspiring to commit any such crime. s. 907.041, F.S.

⁴ s. 903.047, F.S.

⁵ Section 648.25, F.S., defines "Professional bail bond agent" as any person who pledges United States currency, United States postal money orders, or cashier's checks as security for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value.

“surrender,” or return, the defendant to the custody of the person who would have held the defendant absent the bail.⁶ Ordinarily, a bail bond agent will do this if the bail bond agent believes the defendant is a flight risk or if the collateral provided for bail is discovered to be insufficient. Upon surrender, the official taking custody of the defendant will issue a certificate acknowledging the surrender.⁷ The bail bond agent then can present the certificate and bond to the court which will issue an order exonerating the obligors and refunding money or bonds deposited as bail.⁸

If a defendant does not appear for judicial proceedings as ensured by the bail bond, the bond is considered breached and the court declares the bond “forfeited.”⁹ Within 5 days after forfeiture of a bail bond, the court must mail a notice to the surety agent and the surety company.¹⁰ The forfeiture of a bond must be paid within 60 days of the date the notice to the bail bond agent and surety was filed.¹¹ However, after a breach of the bond, the law requires a court to “discharge” a forfeiture (before it is paid) within 60 days upon:

- a determination that it was impossible for the defendant to appear as required due to circumstances beyond the defendant’s control;
- a determination that, at the time of the appearance, the defendant was adjudicated insane and confined in an institution or hospital or was confined in a jail or prison; or
- surrender or arrest of the defendant if the delay has not thwarted the proper prosecution of the defendant.¹²

In addition to the above, the clerk of court must discharge the forfeiture of the bond if the defendant is arrested and returned to the county of jurisdiction of the court prior to judgment.¹³ The bail bond agent is required to pay the costs associated with returning the defendant to the county of jurisdiction, as a condition of the clerk discharging the forfeiture.¹⁴

In cases where a bond has been forfeited and not paid or discharged by a court within 60 days, the court enters a judgment against the bail bond agent for the amount of the bond.¹⁵ After the judgment is entered, the court is required to furnish DFS and the surety company issuing the bond with a certified copy of the judgment.¹⁶ If this judgment is not paid within 35 days, the court provides DFS and the sheriff of the county in which the bond was executed, copies of the judgment and a certification that the judgment has not been satisfied.¹⁷ DFS receives notice of the judgment and monitors unpaid judgments as a part of its regulation of surety insurance companies. Bail bond agents who have outstanding judgments which are unpaid for 35 days are precluded by law from executing bail bonds. After 50 days of an unpaid judgment, the surety company is precluded by law from issuing bail bonds.¹⁸

The law provides that within 10 days after all of the conditions of a bond have been satisfied or the forfeiture discharged or remitted, the court shall order the bond canceled.¹⁹ All of the conditions of a bond are deemed to be satisfied after the defendant has been adjudicated guilty or not guilty.²⁰

Polakoff Bail Bonds v. Orange County

⁶ s. 903.21, F.S.

⁷ *Id.*

⁸ *Id.*

⁹ s. 903.26, F.S.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ s. 903.27, F.S.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ s. 903.31, F.S.

²⁰ *Id.*

Section 903.31(1), F.S., states, in part: "An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond."

Section 903.31(2), F.S. states:

The original appearance bond shall not be construed to guarantee deferred sentences, appearance during or after a presentence investigation, appearance during or after appeals, conduct during or appearance after admission to a pretrial intervention program, payment of fines, or attendance at educational or rehabilitation facilities the court otherwise provides in the judgment. If the original appearance bond has been forfeited or revoked, the bond shall not be reinstated without approval from the surety on the original bond.

In *Polakoff Bail Bonds v. Orange County*, the Florida Supreme Court said the condition of an appearance bond was not satisfied when the trial court accepts a plea of guilty and enters a finding of guilt, but withholds adjudication and judgment and continues the case for sentencing until the completion of the presentence investigation.²¹ The court found that a judgment must be entered in order for the conditions of bond to be satisfied.²² The court read s. 903.31, F. S., in conjunction with s. 903.045, F.S., which explains the nature of a surety bail bond:

It is the public policy of this state and the intent of the Legislature that a criminal surety bail bond, executed by a bail bond agent licensed pursuant to chapter 648 in connection with the pretrial or appellate release of a criminal defendant, shall be construed as a commitment by and an obligation upon the bail bond agent to ensure that the defendant appears at all subsequent criminal proceedings and otherwise fulfills all conditions of the bond. The failure of a defendant to appear at any subsequent criminal proceeding or the breach by the defendant of any other condition of the bond constitutes a breach by the bail bond agent of this commitment and obligation.²³

The court found that "in the context of a presentence investigation, unless the trial court adjudicates the defendant guilty and provides for the presentence investigation within the judgment, the bond is not satisfied and the defendant must continue to appear at all subsequent proceedings to avoid forfeiture."²⁴

Subsequent to the *Polakoff Bail Bonds* decision, the Fifth District Court of Appeal found that the Florida Supreme Court's decision in *Polakoff Bail Bonds* was limited to the circumstances of a presentence investigation where no judgment had been entered, but reasoned that "because there is never an adjudication of guilt or innocence before a defendant is accepted into a pretrial intervention program, we believe that the legislature must have intended, in cases involving pretrial intervention, an exception to the general rule requiring an adjudication for discharge of a bond."²⁵

Effect of Proposed Changes

Pretrial Release

As noted above, there is currently a presumption in favor of release on *nonmonetary* conditions for any person who is granted pretrial release unless such person is charged with a dangerous crime. This bill provides that defendants charged with a second or subsequent felony within three years after the date

²¹ 634 So.2d 1083 (Fla. 1994).

²² *Id.* at 1085.

²³ *Id.*

²⁴ *Id.*

²⁵ *Rosenberg Bail Bonds v. Orange County*, 663 So.2d 1389, 1392 (Fla. 5th DCA 1995).

of a prior felony charge, regardless of whether a conviction was entered, forfeit their right to a presumption in favor of release on nonmonetary conditions.

Additionally, existing law mandates certain conditions of pretrial release. A defendant on pretrial release must refrain from criminal activity and must refrain from contact with the victim. This bill requires a defendant to comply with all conditions of pretrial release.

This bill also *requires* judges who grant monetary bail to set a separate and specific bail amount for each charge.²⁶

Bail Bonds

This bill amends the bail bond forfeiture statute to *require* a court to issue a capias or an arrest warrant for a defendant who has failed to appear.²⁷ The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S.,²⁸ and must require extradition of the defendant when arrested in another state if the original charge is a felony. The capias must also require return transportation of the defendant when arrested in another state to the jurisdiction of the court. The bill provides that if the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

This bill also allows for exoneration of the surety if the State Attorney fails to institute extradition proceedings or extradite a defendant on a bail bond if the surety agrees in writing to pay transportation costs. In such instances, any forfeiture or judgment must be set aside or vacated.

This bill provides that in any case in which a bond forfeiture has been discharged by the court conditioned on payment of costs and fees, the amount for which judgment may be entered may not exceed the costs and fees. The bill provides for the cancellation of the bond by the clerk of the court without a court order. This bill provides that a bond does not guarantee a defendant's conduct or appearance at any time after:

- The defendant enters a plea of guilty or nolo contendere;
- The defendant enters into an agreement for deferred prosecution or agrees to enter a pretrial intervention program;
- The defendant is acquitted;
- The defendant is adjudicated guilty;
- Adjudication of guilt is withheld; or
- The defendant is found guilty by a judge or jury.

This bill would have the effect of overruling the *Polakoff Bail Bond* holding that a bond is not satisfied when adjudication is withheld.

C. SECTION DIRECTORY:

Section 1. Amends s. 903.02, F.S., providing that any judge setting or granting bail shall set a separate bail amount for each charge or offense.

²⁶ Florida Statutes do not currently require (or prevent) a judge to set a separate bail for each offense charged. However, the usual practice is for judges to set one bail amount regardless of how many offenses a defendant is charged with.

²⁷ Although not required by statute, courts will generally issue a capias or an arrest warrant for a defendant who has failed to appear as required by a bail bond. Additionally, Rule 3.131(g), Fla. R. Crim. Proc., authorizes, but does not require, courts to direct the arrest and commitment of a defendant at large on bail when there has been a breach.

²⁸ Section 903.046(2)(d), F.S., relates to what a court may consider in determining whether to release a defendant on bail or other conditions. It is not related to capiases or arrest warrants and thus appears to be an incorrect citation.

Section 2. Amends s. 903.046, F.S., providing that a defendant forfeits the right to a presumption in favor of release on nonmonetary conditions if charged with a second or subsequent felony within a certain time period;

Section 3. Amends s. 903.047, F.S., requiring a defendant to comply with all conditions of pretrial release.

Section 4. Amends s. 903.26, F.S., providing for issuance of a capias or arrest warrant for a defendant who has failed to appear; providing requirements for such a capias or warrant; providing for exoneration of a surety and discharge of any bonds if a court fails or refuses to issue such capias or warrant; providing that failure of the state attorney to institute extradition proceedings or extradite the principal on a bail bond after the surety's written agreement to pay actual transportation costs exonerates the surety.

Section 5. Amends s. 903.27, F.S., providing that in cases in which the bond forfeiture has been discharged by the court, the amount of the judgment may not exceed the amount of unpaid fees or costs upon which the discharge had been conditioned.

Section 6. Amends s. 903.31, F.S., providing that the clerk of court shall furnish an executed certificate of cancellation to the surety; providing that the original appearance bond does not guarantee the defendant's conduct or appearance in court under certain circumstances.

Section 7. This act takes effect October 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bail bond industry will benefit in the following ways:

- Requiring judges to set separate bail amounts for each charged offense may result in an increase of bail bond premiums;
- Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years of a prior felony charge will likely increase the number of persons who receive bail and use the services of a bail bond agent;
- Bail bond agents will be exonerated and their bond will be returned if a court fails to issue a capias or warrant that contains specific conditions in **all** instances where a defendant fails to appear; and

- After a bail bond agent agrees in writing to pay the transport costs, the agent will be exonerated and their bond will be returned if the state attorney fails to institute extradition proceedings or extradite the principal on a bail bond.

D. FISCAL COMMENTS:

There could be a workload increase associated with requiring judges to set bail separately for each charge or offense. This would increase the amount of time spent by a judge spent per defendant and increase paperwork required of the courts, clerks of court and county jail personnel.

Removing the presumption in favor of release on nonmonetary conditions for defendants charged with a second or subsequent felony within three years and the requirement to set separate bail amounts for each offense could increase the number of defendants that are not able to bond out of jail. This could increase detainee populations in county jails.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 2 of the bill provides that defendants give up their right to a presumption in favor of release on nonmonetary conditions if the defendant is charged with a second or subsequent felony offense within three years after the date of a prior felony charge.

- The Florida Constitution provides, with some exceptions, that persons charged with a crime are entitled to pretrial release *on reasonable conditions*. Section 907.041, F.S., creates a presumption in favor of release on nonmonetary conditions, and provides that persons must be released on monetary conditions if such conditions are necessary to assure the presence of the person at court proceedings, protect the community from risk of physical harm to persons; and to assure the integrity of the judicial process. Any challenge to the above provision would likely relate to whether it is a reasonable condition that would assure the defendant's presence in court, protect the community from risk of physical harm to persons, and assure the integrity of the judicial process.

Section 4 of the bill *requires* a court to issue a capias or an arrest warrant for a defendant who has failed to appear. The capias or arrest warrant must comply with the requirements of s. 903.046(2)(d), F.S., must require extradition of the defendant when arrested in another state if the original charge is a felony, and must require return transportation of the defendant when arrested in another state to the jurisdiction of the court. If the court fails to issue a capias or an arrest warrant, any bonds deposited by a bail bond agent shall be discharged.

- As noted above, the citation to s. 903.046(2)(d), F.S., appears to be incorrect as the cited section does not discuss capiases or arrest warrants.

- Currently, Florida Statutes do not *require* a court to issue a capias or warrant when a defendant fails to appear. Instead, courts are given *discretion* to issue a capias or warrant in such circumstances. See Rule 3.131, Fla. R. Crim. Proc. There are times when a defendant fails to appear because he or she is unavailable (e.g. hospitalized, has another court appearance at the same time) to attend. In many of these instances, the court is aware of the circumstances and permits the defendant to be absent. However, as drafted, this bill would *require* a court to issue a capias or warrant in these circumstances. If the court fails to do so, even if it was intentional, any bonds deposited by the bail bond agent must be discharged (i.e. given back to the bail bond agent).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to pretrial release; amending s. 903.02,
3 F.S.; providing that any judge setting or granting bail
4 shall set a separate bail amount for each charge or
5 offense; amending s. 903.046, F.S.; providing that a
6 defendant forfeits the right to a presumption in favor of
7 release on nonmonetary conditions if charged with a second
8 or subsequent felony within a certain time period;
9 amending s. 903.047, F.S.; requiring a defendant to comply
10 with all conditions of pretrial release; amending s.
11 903.26, F.S.; providing for issuance of a capias or arrest
12 warrant for a defendant who has failed to appear;
13 providing requirements for such a capias or warrant;
14 providing for exoneration of a surety and discharge of any
15 bonds if a court fails or refuses to issue such capias or
16 arrest warrant; providing that failure of the state
17 attorney to institute extradition proceedings or extradite
18 the principal on a bail bond after the surety's written
19 agreement to pay actual transportation costs exonerates
20 the surety; amending s. 903.27, F.S.; providing that in
21 cases in which the bond forfeiture has been discharged by
22 the court, the amount of the judgment may not exceed the
23 amount of the unpaid fees or costs upon which the
24 discharge had been conditioned; amending s. 903.31, F.S.;
25 providing that the clerk of court shall furnish an
26 executed certificate of cancellation to the surety;
27 providing that the original appearance bond does not
28 guarantee the defendant's conduct or appearance in court

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under certain circumstances; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (4) is added to section 903.02, Florida Statutes, to read:

903.02 Actions following with respect to denial; changes in bail or conditions of bail or bond amount; separation by charge or offense of bond prohibited; "court" defined.--

(4) Any judge setting or granting monetary bail shall set a separate and specific bail amount for each charge or offense. When bail is posted, each charge or offense requires a separate bond.

Section 2. Subsection (3) is added to section 903.046, Florida Statutes, to read:

903.046 Purpose of and criteria for bail determination.--

(3) If a defendant is charged with a second or subsequent felony within 3 years after the date of a prior felony charge, regardless of whether a conviction was entered, the defendant forfeits the right to a presumption in favor of release on nonmonetary conditions as provided in s. 907.041.

Section 3. Subsection (1) of section 903.047, Florida Statutes, is amended to read:

903.047 Conditions of pretrial release.--

(1) As a condition of pretrial release, whether such release is by surety bail bond or recognizance bond or in some other form, the defendant ~~court~~ shall ~~require that~~:

(a) ~~The defendant~~ Refrain from criminal activity of any

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kind, ~~and~~

(b) ~~The defendant~~ Refrain from any contact of any type with the victim, except through pretrial discovery pursuant to the Florida Rules of Criminal Procedure.

(c) Comply with all conditions of pretrial release.

Section 4. Subsections (1) and (5) of section 903.26, Florida Statutes, are amended to read:

903.26 Forfeiture of the bond; ~~when and how directed,~~ discharge; ~~how and when made,~~ effect of payment.--

(1) (a) A bail bond shall not be forfeited unless:

~~1. (a)~~ The information, indictment, or affidavit was filed within 6 months from the date of arrest; ~~and~~

~~2. (b)~~ The clerk of court gave the surety at least 72 hours' notice, exclusive of Saturdays, Sundays, and holidays, before the time of the required appearance of the defendant. Notice shall not be necessary if the time for appearance is within 72 hours from the time of arrest, ~~or if the time is~~ stated on the bond.

(b) Instant with any failure to appear by a defendant, the court shall order and issue to the sheriff for execution a capias or arrest warrant for the defendant who has failed to appear. Such capias or warrant shall comply with the requirements of s. 903.046(2)(d) and shall also require extradition of the defendant when arrested in another state if the original charge is a felony and require return transportation of the defendant when arrested in another state to the jurisdiction of the court when arrested on any case within the state. If the court fails or refuses to issue such

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capias or arrest warrant, the surety shall immediately be
exonerated and any bonds deposited shall be discharged by the
clerk of the court in compliance with s. 903.31(1).

(5) (a) The court shall discharge a forfeiture within 60
days upon:

1.(a) A determination that it was impossible for the
defendant to appear as required due to circumstances beyond the
defendant's control. The potential adverse economic consequences
of appearing as required shall not be considered as constituting
a ground for such a determination;

2.(b) A determination that, at the time of the required
appearance, the defendant was adjudicated insane and confined in
an institution or hospital or was confined in a jail or prison;

3.(c) Surrender or arrest of the defendant if the delay
has not thwarted the proper prosecution of the defendant. If the
forfeiture has been before discharge, the court shall direct
remission of the forfeiture. The court shall condition a
discharge or remission on the payment of costs and the expenses
incurred by an official in returning the defendant to the
jurisdiction of the court.

(b) Failure of the state attorney to institute extradition
proceedings or extradite the principal on a bail bond after the
surety has agreed in writing to pay actual transportation costs
shall exonerate the surety, and any forfeiture or judgment shall
be set aside or vacated and any payment by the surety of a
forfeiture or judgment shall be remitted in full.

Section 5. Subsection (1) of section 903.27, Florida
Statutes, is amended to read:

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113 903.27 Forfeiture to judgment.--
 114 (1) If the forfeiture is not paid or discharged by order
 115 of a court of competent jurisdiction within 60 days and the bond
 116 is secured other than by money and bonds authorized in s.
 117 903.16, the clerk of the circuit court for the county where the
 118 order was made shall enter a judgment against the surety for the
 119 amount of the penalty and issue execution. However, in any case
 120 in which the bond forfeiture has been discharged by the court of
 121 competent jurisdiction conditioned upon the payment by the
 122 surety of certain costs or fees as allowed by statute, the
 123 amount for which judgment may be entered may not exceed the
 124 amount of the unpaid fees or costs upon which the discharge had
 125 been conditioned. Judgment for the full amount of the forfeiture
 126 shall not be entered if payment of a lesser amount will satisfy
 127 the conditions to discharge the forfeiture. Within 10 days, the
 128 clerk shall furnish the Department of Financial Services and the
 129 Office of Insurance Regulation of the Financial Services
 130 Commission with a certified copy of the judgment docket and
 131 shall furnish the surety company at its home office a copy of
 132 the judgment, which shall include the power of attorney number
 133 of the bond and the name of the executing agent. If the judgment
 134 is not paid within 35 days, the clerk shall furnish the
 135 Department of Financial Services, the Office of Insurance
 136 Regulation, and the sheriff of the county in which the bond was
 137 executed, or the official responsible for operation of the
 138 county jail, if other than the sheriff, two copies of the
 139 judgment and a certificate stating that the judgment remains
 140 unsatisfied. When and if the judgment is properly paid or an

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order to vacate the judgment has been entered by a court of competent jurisdiction, the clerk shall immediately notify the sheriff, or the official responsible for the operation of the county jail, if other than the sheriff, and the Department of Financial Services and the Office of Insurance Regulation, if the department and office had been previously notified of nonpayment, of such payment or order to vacate the judgment. The clerk shall also immediately prepare and record in the public records a satisfaction of the judgment or record the order to vacate judgment. If the defendant is returned to the county of jurisdiction of the court, whenever a motion to set aside the judgment is filed, the operation of this section is tolled until the court makes a disposition of the motion.

Section 6. Section 903.31, Florida Statutes, is amended to read:

903.31 Canceling the bond.--

(1) Within 10 business days after the conditions of a bond have been satisfied or the forfeiture discharged or remitted, ~~the court shall order the bond~~ shall be canceled and, if the surety has attached a certificate of cancellation to the original bond, the clerk of the court shall furnish an executed certificate of cancellation to the surety without cost. An adjudication of guilt or innocence of the defendant shall satisfy the conditions of the bond. The original appearance bond shall expire 36 months after such bond has been posted for the release of the defendant from custody. This subsection does not apply to cases in which a bond has been declared forfeited.

(2) The original appearance bond does ~~shall~~ not be

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~~construed to~~ guarantee deferred sentences, appearance during or
after a presentence investigation, appearance during or after
appeals, ~~conduct during or appearance after admission to a~~
~~pretrial intervention program~~, payment of fines, or attendance
at educational or rehabilitation facilities the court otherwise
provides in the judgment. If the original appearance bond has
been forfeited or revoked, the bond shall not be reinstated
without approval from the surety on the original bond.

(3) The original appearance bond does not guarantee the
defendant's conduct or appearance in court at any time after:

(a) The defendant enters a plea of guilty or nolo
contendere;

(b) The defendant enters into an agreement for deferred
prosecution or agrees to enter a pretrial intervention program;

(c) The defendant is acquitted;

(d) The defendant is adjudicated guilty;

(e) Adjudication of guilt of the defendant is withheld; or

(f) The defendant is found guilty by a judge or jury.

(4)~~(3)~~ In any case where no formal charges have been
brought against the defendant within 365 days after arrest, the
court shall order the bond canceled unless good cause is shown
by the state.

Section 7. This act shall take effect October 1, 2006.